

DEC 23 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICHARD GLEN BLOUNT, III,

Defendant - Appellant.

No. 05-30170

D.C. No. CR-04-00015-MWM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Oregon
Michael W. Mosman, District Judge, Presiding

Submitted December 5, 2005^{**}
Portland, Oregon

Before: BROWNING, D.W. NELSON, and O'SCANNLAIN, Circuit Judges.

Richard Blount appeals his conviction under 18 U.S.C. § 922(g)(1) and sentence under § 924(e), arguing that his state burglary convictions were not

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

proper predicate offenses “punishable . . . for a term exceeding one year.” 18 U.S.C. §§ 922(g)(1), 924(e). An Oregon state burglary conviction under Or. Rev. Stat. § 164.215 is punishable by five years imprisonment, Or. Rev. Stat. § 161.605(3), though under the relevant state sentencing guidelines, the defendant could not have been imprisoned more than one year.

Nevertheless, these state convictions satisfy the predicate offense requirements for a conviction under § 922(g)(1) and imprisonment under § 924(e) because the statutory maximum, five years, is “a term exceeding one year.” *See United States v. Murillo*, 422 F.3d 1152 (9th Cir. 2005) (holding that a “crime punishable by imprisonment for a term exceeding one year,” as such crimes are defined by statute, is referencing the statutory maximum, not the guidelines maximum).

State v. Dilts, 103 P.3d 95 (Or. 2004), concerned a defendant’s Sixth Amendment rights as construed by *Blakely v. Washington*, 542 U.S. 296 (2004). As such, *Dilts* has no bearing on categorizing predicate offenses under § 922(g)(1). *See Murillo*, 422 F.3d at 1155 (“The categorization of predicate offenses for purposes of section 922(g)(1) faces none of the Sixth Amendment concerns that prompted the . . . *Blakely* decision[.]”).

AFFIRMED.